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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5247 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANLAL PURSHOTTAMDAS SHETH

Versus

STATE OF GUJ

Appearance:

MR SR BRAHMBHATT for Petitioner

MR UMESH A TRIVEDI for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/12/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioner in this petition prayed for the following reliefs:

(A) quashing and setting aside the Government Resolution dated November 17, 1972, encadreing the post of Medical Record Officer into the cadre of Gujarat Statistical Services Class II.

(B) directing the respondents to treat the post of

Medical Record Officer as an independent post from the post of Gujarat Statistical Service Class II and directing the respondents to frame Rules for the post of Medical Record Officer;

(C) granting such other and further reliefs and passing such other and further orders as the circumstances of the case may require:

#. So far as the matter of encadreing or decadreing of the post is concerned, it is exclusively a matter of prerogative of the State of Gujarat. In such matters, no writ of mandamus of the nature as prayed for can be granted. These Rules, Gujarat Statistical Service Class II are framed under Article 309 of the Constitution of India by his Excellency the Governor of Gujarat in exercise of powers conferred, and the same cannot be quashed and set aside as what it is prayed in the present case on the grounds as raised.

#. So far as the second prayer made to treat the post of Medical Record Officer as an independent post from the post of Gujarat Statistical Service Class II and to direct the respondents to frame Rules for the post of Medical Record officer is concerned, it is suffice to say that it is not in the domain of this Court under Article 226 of the Constitution of India. This Court cannot issue a writ of mandamus to the respondents to frame rule in the manner what it is suggested by the petitioner.

#. However, in the prayer No. (C), the petitioner prayed for grant of further reliefs and passing such other and further orders as the circumstances of the case may require. It is not in dispute that the petitioner is possessing necessary qualifications for appointment on the post of Medical Record Officer. It is also not in dispute that the petitioner retired from the services of the Government from the post of Medical Record Officer. He was permitted, may be on temporary basis, to work on the post of Medical Record Officer under the order dated 25-9-1989 and continue to hold this post. Even if it was a case of temporary promotion, it is not in dispute that a permanent post of Medical Record Officer was available in the Department. Until the Rules are framed and regular promotion or selection is made on the post, it is always open to the respondents to make appointment by promotion on ad hoc or temporary basis and that what precisely has been done in the present case. The petitioner retired from the services on attaining the age of superannuation in 1999. So he worked on this post or

in fact work on this post has been taken from him by the respondents for about ten years.

#. In the result, this petition succeeds in part and it is hereby declared that the petitioner shall be entitled for all the retirementary benefits to be calculated on he basis of the pay what he was drawing on the post of Medical Record Officer on his promotion. The retirementary benefits of the petitioner are to be calculated accordingly and revised P.P.O. and G.P.O. be issued and all the arrears to be paid of the revised retirementary benefits to him within a period of two months from the date of receipt of writ of this order. The petitioner shall also be entitled for interest on the arrears of retirementary benefits at the rate of 12% p.a. from the date of filing of the writ petition till the date of his retirement. Rule accordingly stands disposed of.

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